

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE DUWAMISH TRIBE, *et al.*,

Plaintiffs,

v.

DEB HAALAND, *et al.*,

Defendants.

CASE NO. C22-0633-JCC

ORDER

This matter comes before the Court on the Muckleshoot Indian Tribe's¹ motion to intervene or, in the alternative, for leave to appear as *amicus curiae* (Dkt. No. 14). Having thoroughly considered the briefing and the relevant record, and finding oral argument unnecessary, the Court GRANTS in part and DENIES in part the Muckleshoot's motion for the reasons explained below.

I. Intervention

The Muckleshoot seeks to intervene in the Duwamish Tribe's² federal recognition suit. (*See* Dkt. No. 14; *see generally* Dkt. No. 2.) This is not the first time the Court has considered this issue; it denied the Muckleshoot's last request. *See Hansen v. Kempthorne*, 2008 WL 11508392, slip op. at 5 (W.D. Wash. 2008). As described more fully below, the Muckleshoot

¹ Referenced hereafter as the "Muckleshoot," denoting the federally recognized Indian tribe. *See* 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022).

² Referenced hereafter as the "Duwamish," denoting an "Indian tribe with its ancestral home in present-day Seattle and surrounding areas." (*See* Dkt. No. 2 at 4.)

1 provides the Court with no reason to reconsider that decision.

2 A movant has a right to intervene under Federal Rule of Civil Procedure 24(a)(2) where
3 (1) the motion is timely, (2) the movant claims a “significantly protectable” interest relating to
4 the property or transaction which is the subject of the action, (3) the movant is situated so that
5 the disposition of the action may as a practical matter impair or impede its ability to protect that
6 interest, and (4) the movant’s interest is inadequately represented by the parties to the action.
7 *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011). If a movant fails to
8 establish any of the Rule 24(a)(2) elements, the Court, in its discretion, may grant permissive
9 intervention. *See* Fed. R. Civ. P. 24(b)(1)(B). In doing so, the Court may consider factors
10 including (1) “the nature and extent of the intervenors’ interest,” (2) whether existing parties
11 adequately represent those interests, (3) “the legal position [intervenors] seek to advance,” and
12 (4) “whether parties seeking intervention will significantly contribute to full development of the
13 underlying factual issues in the suit and to the just and equitable adjudication of the legal
14 questions presented.” *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

15 The Duwamish contend, based on the Court’s prior ruling, that the Muckleshoot is
16 precluded from intervening. (*See* Dkt. No. 18 at 2–3 (citing *Hansen*, 2008 WL 11508392, slip
17 op. at 5).) And, according to both the Duwamish and the Government Defendants, if the Court’s
18 prior ruling does not preclude intervention, the Muckleshoot lacks the interest necessary to
19 support intervention. (*See* Dkt. Nos. 18 at 3–11, 20 at 4–11.)

20 These contentions all turn on a single issue: Whether the Duwamish is seeking the same
21 relief in the instant suit that it sought in the prior suit. If so, the Muckleshoot lacks an interest
22 supporting intervention, as the Court found that it did the last time. *See Hansen*, 2008 WL
23 11508392, slip op. at 5; *see also U.S. v. Washington*, 593 F.3d 790, 801 (9th Cir. 2010) (finding
24 “good reasons for adhering to the rule that treaty tribes are not entitled to intervene in recognition
25 decisions to protect against possible assertions of treaty rights” because such involvement would
26 “interject[] unnecessary and distracting considerations into recognition proceedings.”)

1 In attempting to distinguish this from the last case, the Muckleshoot point to the
 2 Duwamish’s request for a declaratory judgment and mandamus relief—tactics it did not
 3 previously employ. (*See* Dkt. No. 14 at 7 (citing Dkt. No. 2 at 35–39, 49).) But these are
 4 *mechanisms* for relief. The critical issue is the type of *relief sought*, which remains the same—
 5 federal tribal recognition. (*Compare* Case No. C08-0717-JCC, Dkt No. 49, (W.D. Wash. 2011),
 6 *with* Case No. C22-0633-JCC, Dkt. No. 2 (W.D. Wash. 2022).)

7 In a further effort to distinguish the two cases, the Muckleshoot point to current
 8 allegations regarding the Duwamish’s prior treaty dealings and loss of cultural artifacts. (*See*
 9 Dkt. No. 14 at 7–8 (citing Dkt. No. 2 at 2, 24–25, 34).) The Muckleshoot argue those allegations
 10 suggest a knock-on effect from a recognition determination that would differ from the last one.
 11 (*Id.*) These ancillary considerations were equally present in the last recognition challenge, even if
 12 not clearly articulated in the earlier complaint. *See* Case No. C08-0717-JCC, Dkt No. 49, (W.D.
 13 Wash. 2011). Regardless, in the instant matter, they provide *context*—nothing more. Because the
 14 Duwamish still request only tribal recognition, (*see* Dkt. No. 2 at 49–50), intervention in this suit
 15 is not warranted. *See, e.g., Greene v. Babbitt*, 64 F.3d 1266, 1270–71 (9th Cir. 1995). If the
 16 Duwamish later bring a separate suit seeking either treaty rights or the return of cultural artifacts,
 17 and the Muckleshoot is not named as a defendant, intervention may be warranted. But not here.

18 For the reasons described above, the Muckleshoot’s motion to intervene, both as of right
 19 and on a permissive basis, is DENIED.

20 II. Amicus Curiae

21 Alternatively, the Muckleshoot seeks leave to participate as *amicus curiae*. Specifically,
 22 it asks to do so “for the same reasons and on the same terms as the Court granted [in the
 23 Duwamish’s last recognition challenge]. (Dkt. No. 14 at 13.) District courts have “broad
 24 discretion” regarding the appointment of *amici*. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir.
 25 1982), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995). For the same
 26 reasons the Court previously found that *amicus curiae* participation was warranted, *see Hansen*

1 v. *Kemphorne*, 2009 WL 10725425, slip op. at 2 (W.D. Wash. 2009), it does so here.

2 Accordingly, the Muckleshoot's motion for leave to participate as *amicus curiae* is
3 GRANTED in part. It may file *amicus* briefs responding to motions initiated by the parties, shall
4 receive access to the administrative record on the same terms as the parties, and is bound by the
5 terms of any protective order to be entered by the Court.

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7 DATED this 6th day of September 2022.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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